

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 7253**

**BILL NUMBER:** SB 232

**NOTE PREPARED:** Jan 5, 2009

**BILL AMENDED:**

**SUBJECT:** Public Access Issues.

**FIRST AUTHOR:** Sen. Gard

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill requires a public agency to give notice of the agency's meetings to any person who makes an annual request for notice. It allows a court to assess a civil penalty of up to \$1,000 against each of the following for violating the public records law or the open door law: (1) the officer of a public agency. (2) employee of a public agency. (3) the public agency. It requires (rather than allows) a court to review public records in camera to determine whether redaction of the records violates the public records act. If a formal complaint is filed, it requires the Public Access Counselor to review public records in camera to determine whether redaction of the records violated the access to public records act.

The bill creates an Education Fund for a program administered by the Public Access Counselor to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the public access laws, and makes a continuous appropriation.

**Effective Date:** July 1, 2009.

**Explanation of State Expenditures:** *Summary* - This bill could have an indeterminable fiscal impact on all public agencies beginning in FY 2010. The bill requires that any person who delivers an annual written request for notice may receive the notice by one of three methods as determined by the governing body: by fax, by email, or by U.S. prepaid postage. Under current law, a public agency is only required to provide notice by fax, email, or postage to "all news media which delivered" an annual written request for notice. The increase in expenditures will depend upon the number of people who request notices that were not previously receiving notices.

This bill could also increase expenditures of a public agency if the agency or any officer or employee of that

agency knowingly, intentionally, or recklessly does any of the following:

- (1) Denies or interferes with a person's request for inspection or copying of a public record if:
  - (A) the person's request meets the requirements of this chapter; and
  - (B) the record is subject to disclosure by law.
- (2) Charges a copying fee that exceeds the amount permitted by this chapter.
- (3) Discloses without authorization or fails to protect information classified as confidential by state statute.
- (4) Attends a meeting from which the public is excluded.
- (5) Attends one or more of a series of gatherings in violation of IC 5-14-1.5-3.1.
- (6) Participates in final action taken at an executive session where a strategy for the implementation of security systems is discussed.

The bill allows a court to assess a civil penalty of not more than \$1,000 for each violation of the provisions above. The penalties are required to be deposited in the Education Fund established under the bill. The amount of penalties that will be collected is indeterminable because it will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

**Background Information** - Under IC 5-14-1.5-2 "public agency" means the following:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.
- (3) Any entity which is subject to either:
  - (A) budget review by either the Department of Local Government Finance or the governing body of a county, city, town, township, or school corporation; or
  - (B) audit by the State Board of Accounts.
- (4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.
- (5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.
- (6) The Indiana Gaming Commission established by IC 4-33, including any department, division, or office of the commission.
- (7) The Indiana Horse Racing Commission established by IC 4-31, including any department, division, or office of the commission.

**Explanation of State Revenues:** Revenues from a public agency violating the provisions of this bill will be distributed into the Education Fund. The amount of revenue is indeterminable and will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

The nonreverting Education Fund established under the bill is required to be administered by the State Budget Agency and used to pay: (1) expenses of administering the Fund; and (2) the administrative costs of training public officials and educating the public on the rights of the public and the responsibilities of public agencies under the public access laws.

**Explanation of Local Expenditures:** Local units and agencies are included in the definition of public

agency. Please refer to *Explanation of State Expenditures* for an explanation of this bill's impact on public agency expenditures.

**Explanation of Local Revenues:** Revenues from a public agency violating the provisions of this bill will be distributed into the Education Fund. The amount of revenue is indeterminable and will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

**State Agencies Affected:** All.

**Local Agencies Affected:** All.

**Information Sources:**

**Fiscal Analyst:** Jessica Harmon, 317-232-9854.